



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P. O. Drawer 1190

Daphne, Alabama 36526

February 19, 2002

IN REPLY REFER TO:
02-0408

File: EC 26.5.1

ADEM Hearing Officer
Office of the General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Dear Sir:

We appreciate the opportunity to assist with the revision of water quality standards for Alabama. Proposed revisions, as presented in the December 23, 2001 Notice of Rulemaking (Notice), apply to Chapter 335-6-10 (Rule No. 335-6-10-.11, Water Quality Criteria Applicable to Specific Lakes) and Chapter 335-6-11-.02 (Rule No. 335-6-11-.02, Use Classifications) of the Alabama Department of Environmental Management (ADEM) Administrative Code (Code). Our comments are submitted under the provisions of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), Fish & Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 1531 et seq.), and the Clean Water Act (PL 92-500, as amended; 33 U.S.C. 1251 et seq.). Consistent with the Alabama Water Pollution Control Act, our comments are proposed to enhance ADEM's ability to protect, maintain, and improve water quality for the propagation of wildlife, fish, and aquatic life, including threatened and endangered species. Section 335-6-11-.01 of the ADEM Code provides for a formal review of the entire water quality standards package, including use classifications, every three years. We assume that the proposed revisions are part of the formal triennial review process. We, therefore, provide recommendations on other revisions to Chapter 335-6-11-.02 in addition to those provided under the Notice. For your convenience, we present our recommendations by hydrographic basins in which specific water bodies occur.

Cahaba River Basin

The use classification of Buck Creek from Cahaba Valley Creek to Shelby County Road 44 is currently designated as Limited Warm Water Fishery (LWF). Buck Creek is tributary to the Cahaba River. The use classification of the Cahaba River in this reach has been designated as Outstanding Alabama Water (OAW). Additionally, the Cahaba River basin supports at least ten federally-listed threatened and endangered species. Section 335-6-11-.01(1) of the ADEM Code provides that use classifications are based on existing utilization, uses reasonably expected in the future, and uses which are attainable if the effects of pollution are controlled or eliminated. In view of ongoing water quality enhancement efforts under the Alabama Clean Water Partnership, water quality conditions consistent with the Fish and Wildlife (F&W) use classification are reasonably attainable for this stream reach as adequate pollution control measures are

implemented. Such a designation will not only protect water quality conditions inherent in the OAW designation but will also enhance efforts to protect and recover federally-protected species. We, therefore, recommend that the LWF use classification currently designated for Buck Creek be replaced with the full Fish and Wildlife (F&W) use classification.

Mobile River-Mobile Bay Basin

The use classifications for Three Mile Creek from the Mobile River to its source and the Industrial Canal from Three Mile Creek to its source are currently designated as Agriculture and Industrial (A&I). The A&I classification provides minimal protection of fish and wildlife. For example, this designation does not expressly prohibit toxic materials in toxic amounts and permits dissolved oxygen concentrations that are not protective of aquatic life. Mobile Bay and other areas potentially affected by degraded water quality from Three Mile Creek and the Industrial Canal provide habitat for threatened Gulf sturgeon (*Acipenser oxyrinchus desotoi*) and endangered Alabama redbelly turtle (*Pseudmys alabamensis*). Again, in view of ongoing efforts to improve water quality we believe that water quality conditions consistent with the F&W use classification are attainable. We, therefore, recommend that F&W be designated as the use classification for Three Mile Creek and the Industrial Canal. Such a designation will further efforts to protect water quality in Mobile Bay and will enhance protection of federally-listed species.

Tennessee River Basin

The range of the threatened slackwater darter (*Etheostoma boschungii*) in Alabama is restricted to a limited number of tributaries of the Tennessee River in northwestern Alabama. Designated critical habitat for this species in Alabama is restricted to permanent and intermittent streams with flowing water from December to June which are tributary to Cypress Creek upstream from the junction of Burcham Creek (excluding Threet Creek and its tributaries). Criteria for the OAW use classifications provided in ADEM Code 335-6-10.09(1) include waters with exceptional ecological significance. The limited range of this unique species coupled with the occurrence of designated critical habitat for this species within the State constitute exceptional ecological significance. As such, we recommend that OAW be designated as the use classification for Cypress Creek from the City of Florence Water Treatment Plant to the Tennessee State Line. This designation will assist in the protection of water quality and habitat integrity within this drainage basin. Such protections are essential for the persistence of this species.

Warrior River Basin

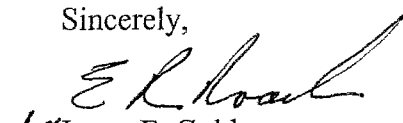
The Notice includes the proposal to change the classification for portions of Valley Creek and Village Creek in the Warrior River drainage from A&I to LWF. Both Valley Creek and Village Creek historically supported the threatened flattened musk turtle (*Sternotherus depressus*) and possibly the Black Warrior waterdog (*Necturus alabamensis*), a candidate species for federal protection. While the reclassification of the beneficial uses to LWF is technically an upgrade, this beneficial use designation provides limited protection of water quality and aquatic life. Again, in view of ongoing water quality enhancement efforts under the Alabama Clean Water Partnership, water quality conditions consistent with the Fish and Wildlife (F&W) use classification are reasonably attainable in these stream segments as adequate pollution control

measures are implemented. Such a designation will assist in effort to recover flattened musk turtle and to preclude listing of Black Warrior waterdog. We, therefore, recommend that F&W be designated as a use classification for both Valley and Village Creeks.

Turkey Creek and the lower reaches of Dry and Beaver Creeks provide the only known habitat for the endangered vermilion darter (*Etheostoma chermocki*). Turkey Creek is truly a unique and irreplaceable water body with high ecological significance. Failure to provide adequate protection of water and habitat quality in Turkey Creek will result in the extinction of this species. As such, Turkey Creek fulfills this criteria for designation as OAW. We, therefore, recommend that Turkey Creek from the Locust Fork to its source be designated as an OAW.

We appreciate the opportunity to assist in this revision of water quality standards for Alabama. Please contact Peter Tuttle or Elizabeth Langston at (251) 441-5181 if you have questions regarding this matter.

Sincerely,


for Larry E. Goldman
Field Supervisor

cc:

Administrator, Alabama Department of Environmental Management, Montgomery, Alabama
Regional Administrator, Environmental Protection Agency, Atlanta, Georgia